

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

OHIO A. PHILIP RANDOLPH, *et al.*,

Plaintiffs,

No. 1:18cv357

v.

ORDER DENYING MOTION TO STAY,
GRANTING MOTION TO MODIFY
PROTECTIVE ORDER

RYAN SMITH *et al.*,

Defendants.

OPINION AND ORDER

Movants the Ohio Attorney General and E. Mark Braden move for a stay of the Panel's Opinion and Order, ECF No. 121, or to modify the protective order in this case. The deadline for complying with ECF No. 121 is noon today, and Plaintiffs have understandably not yet responded to movants' motion.

For the reasons addressed in ECF No. 121, movants are unlikely to succeed on the merits of any appeal. Namely, movants have not shown the emails (or attachments thereto) were sent for the purpose of obtaining legal advice and have not shown that the requested documents were prepared for litigation. Accordingly, movants' motion to stay is **DENIED**.

Movants' motion to modify the protective order is **GRANTED**. Documents and files produced in response to ECF No. 121 temporarily shall be designated "Attorneys' Eyes Only." Documents so designated may be shared only with attorneys representing the Parties in this case or those attorneys' consulting or testifying experts who agree to be bound by the protective order. If ECF No. 121 is reversed on appeal, the Parties' attorneys will immediately destroy or return to the Ohio Attorney General all copies of the documents and files, as well as any work product (including portions of depositions) that resulted in whole or in part from the attorneys-eyes-only documents, and will direct any consulting or testifying expert who has received a copy of the documents or files to destroy those

documents or files and work product resulting therefrom. During the pendency of any review by an appellate court of ECF No. 121, if a Party seeks to file an Attorneys-Eyes-Only document with this Court, or use it as an exhibit at trial, the Party will seek leave of this Court before doing so. If a reviewing court affirms ECF No. 121, then any document or file produced pursuant to the District Court's Order will no longer be designated as "Attorneys' Eyes Only" or fall under any other provisions of the protective order. Moreover, if movants fail to appeal ECF No. 121 within **SEVEN DAYS**, the Panel will vacate this Opinion and Order, and the documents and files produced in response to ECF No. 121 will no longer be designated "Attorneys' Eyes Only."

The Court reserves the right to order full briefing on movants' motion or to revisit the issue and this Opinion and Order *sua sponte*.

IT IS SO ORDERED.

Date: 12/16/18

/s/ Timothy S. Black and Michael H. Watson
United States District Judges on behalf of the Panel

HONORABLE TIMOTHY S. BLACK
United States District Judge

HONORABLE KAREN NELSON MOORE
United States Circuit Judge

HONORABLE MICHAEL H. WATSON
United States District Judge